IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 137 of 2005 (S/B)

Date of decision: 15th July, 2005

A.F.R. (Approved for Reporting)

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Not approved for reporting

Date Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 137 of 2005 (S/B)

Vijay Kumar Srivastava,
S/o Late Sri Rajeshwari Prasad Srivastava,
At present Superintending Engineer,
Uttaranchal Jal Sansthan, Almora. ……. Petitioner

Versus

1. State of Uttaranchal,
through Secretary, Water Supply,
Govt. Secretariat, Dehradun.
2. Mr. H.P. Uniyal,
S/o Late Sri H.L. Uniyal,
Chief General Manager,
Uttaranchal Jal Sansthan, Dehradun. ……. Respondents

Dr. Sumant Bhardwaj and Mr. T.A. Khan, Advocates for the petitioner.
Mr. K.P. Upadhyaya, Standing Counsel for the State of Uttaranchal.

Coram: Hon. Cyriac Joseph, C.J.
Hon. Rajesh Tandon, J.

ORAL JUDGMENT: (Per Hon'ble the Chief Justice)

1. The petitioner has filed this writ petition praying for "a writ of" quo warranto in relation to public office of Head of the Department/ Chief General Manager of Uttaranchal Jal Sansthan, Dehradun." The petitioner is presently the Superintending Engineer, Uttaranchal Jal Sansthan, Almora. The second respondent Mr. H.P. Uniyal is the Chief General Manager, Uttaranchal Jal Sansthan, Dehradun. The contention of the petitioner is that the appointment of the second respondent as the Head of the Department/Chief General Manager of Uttaranchal Jal Sansthan is illegal and therefore, a writ of quo warranto should be issued calling upon him to explain under what authority he is holding the said office.

2. The petitioner and the second respondent were appointed as Assistant Engineers in Garahwal Water Works, Dehradun on 24.11.1976. As evidenced by Annexure P/1 order the name of the petitioner was given above the name of the second respondent in the appointment order dated 24.11.1976. Later, by Annexure P/2 order dated 17.11.1979 of the General Manager, Garhwal Water Works, the

Petitioner and the second respondent were confirmed on the post of Assistant Engineer with effect from 24.11.1977. Annexure P/2 contained two lists. In the firs list of seven persons, the name of the petitioner was given at Serial No. 1. In the second list of three persons the name of the second respondent was given at Serial No. 1. Thus, the petitioner was treated as senior to the second respondent in the cadre of Assistant Engineers. Subsequently, as per Annexure P/3 order dated 11.12.1984, the petitioner was promoted as Executive Engineer on *ad hoc* basis. The second respondent was not there among the Assistant Engineers promoted as per Annexure P/3 order. but the second respondent had already been appointed as Executive Engineer on temporary basis on 01.10.1980 as per order dated 01.10.1980 of the General Manager, Garahwal Water Works. When a Tentative Seniority List of officers under Group 'B' working in the Water Works, Sewerage and Nagar Palika Boards was prepared on 06.09.1989 under Rule 6 of U.P. Water Works and Sewerage (Centralised) Service Rules, 1986, the name of the petitioner was shown at Serial No. 31 whereas the name of the second respondent was shown at Serial no. 32 among Executive Engineers. In the Remarks Column in the seniority list, it was stated that Garhwal Jal Sansthan had promoted the second respondent as Executive Engineer on 01.10.1980; that his promotion w as by local arrangement for executing civil works; that at the time of his promotion, the name of the petitioner was not considered; that the petitioner was promoted w.e.f. 11.12.1984 after he completed seven years of service; and that the second respondent was deemed to have been promoted from 11.12.1984 and accordingly placed below the petitioner. The second respondent made representation against the Tentative Seniority List objecting to his placement below the petitioner in the said seniority list. As per an Order No. 273/9-3-90-256-W/86 dated 14.01.1990 of the Government of Uttar Pradesh, the Final Seniority List of the officers working in the Water Works, Hydrology, Nagar Palika Boards was issued under Rule 6 of the U.P. Palika and Water Works (Centralised) Service Rules, 1986. In the said Final Seniority List, the

name of the second respondent was shown at Serial No. 1 among Executive Engineers and his date of appointment was shows as 01.10.1980. The name of the petitioner was not included in the said Final Seniority List.

3. Hence, challenging the said Final Seniority List dated 14.01.1990, the petitioner alongwith another person filed Writ Petition No. 3948 of 1990 [now renumbered as Writ Petition No. 27 (S/B) of 2004] in the High Court of Allahabad – Lucknow Bench. The second respondent herein was impleaded as the third respondent in that writ petition. While issuing notice to the respondents in the writ petition, a Division Bench of the High Court of Allahabad passed an interim order on 25.04.1990 directing as follows:

> "In so far as the opposite party No. 3 is concerned, status quo shall be mentioned in the matter of his promotion to the post of General Manager from amongst the Executive Engineers in the Centralised services."

Later, on an application filed by the third respondent in that case, the said interim order was modified on 21.05.1992. The interim order dated 25.04.1990 was modified as follows:

> "The writ petition in which the aforesaid interim order has been passed is directed against assignment of seniority. The consequence of the interim order is that opposite party No. 3 cannot be considered for promotion to the post of General Manager. In my opinion the order needs to be modified so that opposite party No. 3 may also be considered for promotion to the higher post and his promotion, if any, may be subject to the further orders of the court. Of course, if the petitioners fall within the filed of eligibility, they too may be considered.
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> In view of the above the application is partly allowed and the interim order dated 25th April, 1990 is hereby modified to the effect that if any promotion is made to the post of General Manager from amongst the Executive Engineers in the Centralised services, the same shall be subject to the further orders of the Court."

4. Subsequently, during the pendency of the above mentioned writ petition, in exercise of the powers under clause (c) of Sub-Section (3) of Section 20 of the Uttar Pradesh Water Supply and Sewerage Act, 1975 and Uttar Pradesh Palika and Jal Sansthans Water Works Engineering (Centralised) Services Rules, 1986, the Government of Uttar Pradesh issued a Notification dated 16.05.1996 promoting the second respondent as the General Manager, Nagar Abhiyanta (Jal) in the scale of pay of Rs. 4100-5300 with effect from the date of taking over charge. At the time of his promotion, the second respondent was a A class Water Works Engineer / Executive Engineer of U.P. Palika and Jal Sansthan Water Works Engineering (Centralised) Services. It was specified in the Notification that the appointment of the second respondent as General Manager shall remain subject to the final judgment in Writ Petition No. 3948 (S/B) of 1990 (which was filed by the petitioner herein) and a few other writ petitions.

5. Thereupon, Writ Petition No. 3948 (S/B) of 1990 was amended for including the following prayers also:

> "to issue writ, order or direction in the nature of mandamus directing and commanding the opposite parties to treat the petitioners as promoted to the post of Executive Engineer with effect from 01.10.1980 and to give the benefit of selection grade on the post of Executive Engineer with effect from 24.11.1994 and to promote the petitioners to the post of General Manager with effect from 16.05.1996 and thereafter promote to the post of General Manager equivalent to the post of Chief Engineer Level I with effect from 05.10.2000 with all consequential benefits since when these benefits have been given to their junior Sri H.P Uniyal without considering the case of the petitioners within some reasonable time which may be one month and accordingly the interse seniority position of the petitioners with junior also be maintained as was existing on the feeder post of Assistant Engineer."

6. Thereafter, the Government of Uttar Pradesh as per an Order dated 05.10.2000 appointed the second respondent as General Manager, Garhwal Jal Sansthan on a scale of Rs. 16,400-450-20,000 (equivalent to the level of Chief Engineer). The said order dated

05.10.2000 also was challenged by the petitioner herein in another writ petition, namely, in Writ Petition No. 1693 (S/B) of 2000 filed in the High Court of Allahabad, Lucknow Bench. Observing that the question of seniority between the petitioner and the second respondent was pending in Writ Petition No. 3948 (S/B) of 1990 and hence there was no occasion for the petitioner to file another writ petition, Writ Petition No. 1693 (S/B) of 2000 was dismissed by the High Court of Allahabad on 03.11.2000. However, it was provided in the judgment that the appointment of the second respondent shall be subject to the final decision which may be taken in Writ Petition No. 3948 (S/B) of 1990.

7. Thus, though the petitioner had challenged the Final Seniority List of Executive Engineers in which the name of the second respondent was included but the name of the petitioner was not included and through the petitioner had challenged the second respondent's appointments as General Manager and General Manager (Chief Engineer Level), the High Court did not grant any stay and the second respondent was allowed to continue as General Manager and General Manager (Chief Engineer Level) subject to the final decision in Writ Petition No. 3948 (S/B) of 1990. Admittedly, the said writ petition, now numbered as Writ Petition No. 27 (S/B) of 2004, is still pending in this High Court.

8. The provocation for the petitioner to file this writ petition is stated to be the action of the Government of Uttaranchal in issuing Annexures P/7 and P/8 orders in the year 2002. As per Annexure P/7 order dated 31.08.2002, the General Manager (Chief Engineer Level) was nominated as Head of the Department of Uttaranchal Water Works. Such an order was required as the Uttaranchal Water Works constituted as per Gazette Notification dated 26.08.2002 should have a Head of the Department. Since the post of General Manager (Chief Engineer Level) was the highest post in the Department, the General Manager (Chief Engineer Level) was nominated as the Head of the

Department. Consequently, the second respondent who was then General Manager (Chief Engineer Level) became the Head of the Department. As per Annexure P/8 order dated 20.11.2002, the post of General Manager (Chief Engineer Level) was re-designated as Chief General Manager Uttaranchal Water Works. Such a re-designation was made in view of Sub-Section 2(a) of Section 20 of the U.P. Water Supply and Sewerage Act 1975 as modified by the Uttaranchal (The Uttar Pradesh Water Supply and Sewerage Act, 1975) Adaptation and Modification Order, 2002. As per Sub-Section 2(a) of Section 20, the Uttaranchal Jal Sansthan shall have, as its member, "a Chief General Manager to be appointed by the State Government who shall be qualified engineer having administrative experience of Water Supply and Sewerage works." Hence the post of General Manager (Chief Engineer Level) / Head of the Department was re-designated as Chief General Manager. Thereupon, the second respondent who was working as General Manager (Chief Engineer Level)/ Head of the Department, took charge Chief General Manager and has been continuing in that post for the last 1 ½ years.

9. It cannot be said that the second respondent was not eligible or qualified for the post of Chief General Manager, because a qualified engineer having administrative experience of Water Supply and Sewerage works is eligible and qualified to be appointed as Chief General Manager. As the second respondent was a qualified engineer and had administrative experience as Assistant Engineer and Executive Engineer in Garhwal Water Works from 24.11.1976 to 15.05.1996 and as General Manager from 15.05.1996 he was fully qualified and eligible for being appointed as Chief General Manager. It cannot also be said that the Government of Uttaranchal was not competent to appoint the second respondent to the post of Chief General Manager. The petitioner has also not pointed out any violation of any rule in the matter of appointment of the second respondent as Chief General Manager. Hence, the second

respondent's appointment as Chief General Manager is not vitiated by any illegality.

10. The only grievance of the petitioner can be that, since he claims to be senior to the second respondent in the cadre of Executive Engineer, he had a better claim for appointment as Chief General Manager but his claim was over looked while appointing the second respondent. But the question relating to interse seniority of the petitioner and the second respondent is admittedly pending in Writ Petition No. 27 (S/B) of 2004. Till the dispute regarding interse seniority is finally decided in that writ petition, the Government of Uttaranchal could proceed only on the basis of the ranking in the Final Seniority List in force. Though the petitioner challenged the said seniority list and sought interim direction to treat the petitioner as senior to the second respondent, the request was turned down by the Court and the appointments given to the second respondent were made subject to the final decision in the said writ petition. When the second respondent was appointed as Chief General Manager, he had already been working as General Manager (Chief Engineer Level) from 05.10.2000 and the petitioner was only a Superintending Engineer. In such circumstances, the action of the Government in appointing the second respondent as Chief General Manager subject to the judgment in Writ Petition No. 27 (S/B) of 2004 is not wrong or illegal.

11. It is necessary to correctly understand the technical nature of a writ of quo warranto and the conditions to be satisfied for issuing a writ of quo warranto. The court is bound to be conscious of the limits of its jurisdiction and they have to be strictly adhered to.

12. A writ of quo warranto is generally regarded as an appropriate and adequate remedy to determine the right or title to a public office and to oust an incumbent who has unlawfully usurped or intruded into such office or is unlawfully holding the same. A proceeding in quo

warranto against a public officer is for the purpose of determining whether he is entitled to hold the office and discharge its functions. In a quo warranto proceeding, the function of the court is only to determine whether there has been usurpation of a public office and not to search the conscience of the appointing authority to ascertain his motive. The question of the motive of the appointing authority in appointing a person to a public office is irrelevant in a quo waranto proceeding. Quo warranto is a discretionary relief and is not granted as a matter of course. Quo warranto is not a matter of right. The Court has discretion to grant or refuse it according to the facts and circumstances of the case. If it is vexatious and has been filed for vindication of personal prejudice, writ can be refused. If the applicant had an alternative remedy but it was not availed of or if the applicant is guilty of delay or if the application is barred by res judicata, writ may be refused. The court will not issue a writ of quo warranto if it would be futile, as where the alleged defect in the original appointment can be cured by immediate reappointment. However, the Court has the right to adjudicate and decide on the validity of appointment even if the applicant is not rival applicant to the office and has no personal interest in the issue of a writ of quo warranto. A petition for a writ of quo warranto is maintainable at the instance of any person whether any fundamental or other legal right of such person has been infringed or not, provided he is not a man of straw set up by some one else. Any member of the public, acting in good faith, whose conduct did not disentitle him to relief, could apply for a writ of quo warranto, without alleging the violation of any specific legal right. The procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointment to the public offices against the relevant statutory provisions. It protects a citizen from being deprived of public office to which he may have a right. It also protects the public from usurpers of public offices. The person holding the public office is called upon to show the authority under which he is occupying the same. If the court is satisfied that the appointment or reappointment of the person was

not made in accordance with the provisions of the statute, it can interfere. The court has to be satisfied that the person holding the office is a usurper. In a quo warranto proceeding, the person is called upon to show whether he possesses the necessary qualification prescribed for that office and whether the authority which he produces is by a person who is authorised to make appointment to the office which he holds. If he shows that he possesses the necessary qualification and that there is no legal impediment in the way of his appointment to the office and that the person who issued the order of his appointment is authorised by law to do so, no writ of quo warranto can be issued against him, because, in such a case he cannot be said to be a usurper. Though an applicant for a writ of quo warranto can ask the court to examine whether a person holding a public office has been validly appointed under the statue concerned, he will not be permitted to challenge the validity of the statutory provisions. In other words, in a quo warranto proceeding the validity of the statutory provision under which the disputed appointment has been made cannot be examined.

13. In this context it is useful to refer to the decision of the Hon'ble Supreme Court in **the University of Mysore vs. C.D. Govinda Rao and another (AIR 1965 Supreme Court 491)** wherein a Constitution Bench of the Supreme Court has held that before a citizen can claim a writ of quo warranto, he must satisfy the Court, inter alia, that the Office in question is a public office and is held by usurper without legal authority and that it necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not. The relevant portion of the decision of the Supreme Court is extracted hereunder:-

> "Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty is called upon to shows by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that

> office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office. In some cases, persons not entitled to pubic office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not."

14. In the case before us, the petitioner has no case that the Government of Uttaranchal was not competent or authorised by law to appoint the second respondent as head of the Department or Chief General Manager of Uttaranchal Water Works. The petitioner could not show that the second respondent does not possess the qualification and experience prescribed for the post of Chief General Manager or the Head of the Department. The petitioner could not show that the second respondent was not eligible for the appointment or that the appointment was made in violation of any law. Merely because the petitioner has questioned the seniority of the second respondent over the petitioner in the cadre of Executive Engineers, the appointment of the second respondent does not become illegal. Hence, in our view, the conditions for issuing a writ of quo warranto do not exist in this case.

15. In the light of the discussion above, we hold that no case is made out for issuing a writ of Quo-Warranto against the second respondent in respect of the office of Head of the Department / Chief

General Manager of Uttaranchal Jal Sansthan. Hence, the writ petition is dismissed in limine.

(Rajesh Tandon, J.) **(Cyriac Joseph, C.J.)**
15.07.2005 **15.07.2005**

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